

## United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO	
09/744,097	01/16/2001	David A Shafer	1414.501U2	2981	
7590 03/19/2007 DR. BENJAMIN ADLER			EXAM	EXAMINER	
C/O ADLER &	a ASSOCIATION		FREDMAN, JEFFREY NORMAN		
8011 CANDLE HOUSTON, T			ART UNIT	PAPER NUMBER	
,			1637		
			MAIL DATE	DELIVERY MODE	
	,		03/19/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

## Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)
09/744,097	SHAFER, DAVID A
Examiner	Art Unit
Jeffrey Fredman	1637

The RRPLY FILED 06 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALL OWNACE.  1. ○ The repty was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of the prior to the condition for allowance; (2) a Notice of Appeal (1) and the prior to the other prices of the prior to the condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Confinued Examination (RCE) in compliance with 37 CFR 11.114. The repty must be filed within one of the following time periods:  1. ○ The period for repty exprise three months from the mailing date of the final rejection.  1. ○ The period for repty exprises three months from the mailing date of the final rejection.  1. ○ The period for repty exprises on: (1) the mailing date of the final rejection, which the prior to the final rejection, which the period with the prior of the final rejection.  1. ○ The period for repty exprises on: (1) the mailing date of the final rejection, which the period with the period with the final rejection.  1. ○ The period for repty exprises on: (1) the mailing date of the final rejection, which the period with the period with the final rejection.  1. ○ The period for repty exprises on: (1) the mailing date of the final rejection.  1. ○ The period for repty exprises on: (1) the mailing date of the final rejection.  1. ○ The Period for repty exprises on: (1) the separation of the period with the period with the final rejection.  1. ○ The Notice of Appeal was filed on the 37 CFR 1.316(s). The date on which the period with 47 CFR 1.13(s) and the appropriate extension fee the condition of the period with the final rejection, even if timely filed, may reduce any examed patent time analysement of the file.  1. ○ The Notice of Appeal was filed on the file of the file of the file of the final rejection, even if timely filed, and the file of the f		Jeffrey Fredman	1637					
1. ☑ The repty was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandomment of this application, applicant must timely file one of the following repties: (1) an amendment, affault, or control and places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR.13(r. or (3) a Request for Continued Examination (RCC) in compliance with 37 CFR.114. The repty must be filed within one of the following time periods:  a) ☑ The period for repty expires three months from the mailing date of the final rejection.  b) ☐ The period for repty expires three months from the mailing date of the final rejection.  Examiner Note: the X: is checked, check either box (a) or (b). ONLY OFECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MFEP 705 607(ff).  Extensions of time may be obtained under 37 CFR.1.136(a). The date on which the petition under 37 CFR.1.136(a) and the appropriate extension fee under 37 CFR.1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for repty originally sat in the final Office action; or (2) as remy reduce any ement parent term allowed the same provided to the shortened statutory period for repty originally sat in the final Office action; or (2) as remy reduce any ement parent term allowed and the main representation of the corresponding amount of the fee. The appropriate extension fee under 37 CFR.1.37(a) and the main representation of the corresponding number of the fee. The appropriate extension fee under 37 CFR.1.37(a) and the main representation of the statutory period for repty originally sat in the final Office action; or (2) as remy reduced any ement parent term feel main f	The MAILING DATE of this communication appe	ars on the cover sheet with the	correspondence add	ress				
1. ☑ The repty was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandomment of this application, applicant must timely file one of the following repties: (1) an amendment, affativit, or (3) a Request for Continued Examination (RCC) in compliance with 37 CPR 1.14. The repty must be filed within one of the following time periods:  a) ☑ The period for repty expires <i>firze</i> months from the mailing date of the final rejection.  b) ☐ The period for repty expires on: (1) the mailing date of the final rejection.  Examiner Note: the X 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MFEP 766 7(f).  Extensions of time may be obtained under 37 CPR 1.138(a). The date on which the petition under 37 CPR 1.13(a) and the appropriate extension fewer been filed is the date for purposes of determining the period of cretical and the corresponding amount of the fee. The appropriate extension fewer year violed are year amount of the fee. The appropriate extension fewer year violed are year amount of the fee. The appropriate extension fewer year duction are year amount of the fee. The appropriate extension fewer year duction of Appeal was filed on A brief in compliance with 37 CFR 4.137 must be filed within two months of the date of the filed propriate extension fewer year duction of Appeal was filed on A brief in compliance with 37 CFR 4.137(b), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any repty must be filed within the time period set forth in 37 CFR 4.137(a).  Important the present additional claims without canceling a corresponding number of finally rejected claims.  NOTICE of APPEAL.  AMENDMENTS								
b) The period for reply expires on; (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection.  Examinar Note; if box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MEPE P106 37(f).  Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee where been filed is the date for purposes of datermining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.13(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final original original calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final original calcinor, or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filled, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).  Committee of Appeal was filled on A brief in compliance with 37 CFR 41.37(e), to avoid dismissal of the appeal, Since a Notice of Appeal days Depail (3) or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal, Since a Notice of Appeal has been filled, any reply must be filled within the time period set forth in 37 CFR 41.37(a).  AMENDMENTS  The proposed amendment(s) filled after a final rejection, but prior to the date of filling a brief, will not be entered because (a) They raise the issues that would require further consideration and/or search (see NOTE below);  (b) They raise the issues that would require further consideration and/or search (see NOTE below);  (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal, and/or  (d) They present additional claims without canceling a correspondi	1. A The reply was filed after a final rejection, but prior to or on this application, applicant must timely file one of the follow places the application in condition for allowance; (2) a No a Request for Continued Examination (RCE) in compliance	the same day as filing a Notice of ving replies: (1) an amendment, a tice of Appeal (with appeal fee) in	of Appeal. To avoid aba offidavit, or other evider or compliance with 37 C	nce, which FR 41.31; or (3)				
TWO MONTHS OF THE FINAL REJECTION. See MFEP 706.07(f).  Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the experient of also of the shortened statutory period for perity originally set in the final Office action; or (2) as set torth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.74(b).  MOTICE OF APPEAL  2.	b) The period for reply expires on: (1) the mailing date of this A no event, however, will the statutory period for reply expire is	dvisory Action, or (2) the date set for ater than SIX MONTHS from the mail	ing date of the final rejecti	on.				
2 ☐ The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a), ho avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).  AMENDMENTS  AMENDMENTS  (a) ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  (b) ☐ They raise the issue of new matter (see NOTE below);  (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).  4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  5. ☐ Applicant's reply has overcome the following rejection(s):	TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f). Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).							
3. ☑ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ☑ They raise new issues that would require further consideration and/or search (see NOTE below); (b) ☑ They raise net issue of new matter (see NOTE below); (c) ☑ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).  4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  5. ☐ Applicant's reply has overcome the following rejection(s):  6. ☐ Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows:  Claim(s) allowed:  Claim(s) ellowed:  AFFIDAVIT OR OTHER EVIDENCE  8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  10. ☐ The affidavit or other evide	2. The Notice of Appeal was filed on A brief in comp filing the Notice of Appeal (37 CFR 41.37(a)), or any exter	nsion thereof (37 CFR 41.37(e)),	to avoid dismissal of th	ns of the date of e appeal. Since				
(c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) They present additional claims without canceling a corresponding number of finally rejected claims.  NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).  4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  5. Applicant's rely has overcome the following rejection(s):  6. Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows:  Claim(s) allowed:  Claim(s) allowed:  Claim(s) allowed:  Claim(s) withdrawn from consideration:  Claim(s) withdrawn from consideration:  AFFIDAVIT OR OTHER EVIDENCE  8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.  REQUEST FOR RECONSIDERATION/OTHER  11. The request for reconsideration has been considered but does NOT place the application in condition for allowance be	3. The proposed amendment(s) filed after a final rejection, I  (a) They raise new issues that would require further con	nsideration and/or search (see N		ecause				
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  5. ☐ Applicant's reply has overcome the following rejection(s):	(c) They are not deemed to place the application in bet appeal; and/or	ter form for appeal by materially		the issues for				
5. Applicant's reply has overcome the following rejection(s):  6. Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows:  Claim(s) allowed:  Claim(s) objected to:  Claim(s) rejected:  Claim(s) withdrawn from consideration:  AFFIDAVIT OR OTHER EVIDENCE  8 The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  9 The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  10 The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.  REQUEST FOR RECONSIDERATION/OTHER  11 The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  12 Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s)  Jeffrey Fredman Primary Examiner Art Unit;1637.	NOTE: See Continuation Sheet. (See 37 CFR 1.1)	16 and 41.33(a)).						
<ul> <li>Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</li> <li>↑ For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to: Claim(s) rejected: Claim(s) withdrawn from consideration:</li> <li>AFFIDAVIT OR OTHER EVIDENCE</li> <li>8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).</li> <li>9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).</li> <li>10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER</li> <li>11. ☑ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.</li> <li>12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s)</li> <li>Jeffrey Fredman Primary Examiner Art Unit: 1637</li> </ul>	<u> </u>	21. See attached Notice of Non-C	Compliant Amendment	(PTOL-324).				
non-allowable claim(s).  7. For purposes of appeal, the proposed amendment(s): a)   will not be entered, or b)   will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows:  Claim(s) allowed:								
how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows:  Claim(s) allowed:  Claim(s) objected to:  Claim(s) rejected:  Claim(s) withdrawn from consideration:  AFFIDAVIT OR OTHER EVIDENCE  8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.  REQUEST FOR RECONSIDERATION/OTHER  11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  See Continuation Sheet.  12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s).  Jeffrey Fredman Primary Examiner Art Unit_1637	non-allowable claim(s).	•	-	-				
Claim(s) objected to: Claim(s) rejected: Claim(s) withdrawn from consideration:  AFFIDAVIT OR OTHER EVIDENCE  8.	how the new or amended claims would be rejected is prov The status of the claim(s) is (or will be) as follows:		viii be entered and an e	explanation of				
AFFIDAVIT OR OTHER EVIDENCE  8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.  REQUEST FOR RECONSIDERATION/OTHER  11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  See Continuation Sheet.  12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s).  13.  Other:  14.  Fredman Primary Examiner Art Unit; 1637	Claim(s) objected to: Claim(s) rejected:							
<ul> <li>8.</li></ul>	· · ·							
entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.  REQUEST FOR RECONSIDERATION/OTHER  11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  See Continuation Sheet.  12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s).  Jeffrey Fredman Primary Examiner Art Unit; 1637	8. The affidavit or other evidence filed after a final action, but because applicant failed to provide a showing of good and	t before or on the date of filing a d sufficient reasons why the affida	Notice of Appeal will <u>no</u> avit or other evidence is	ot be entered s necessary and				
REQUEST FOR RECONSIDERATION/OTHER  11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  See Continuation Sheet.  12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s).  13. Other:  Jeffrey Fredman  Primary Examiner  Art Unit: 1637	entered because the affidavit or other evidence failed to o showing a good and sufficient reasons why it is necessary	vercome <u>all</u> rejections under app and was not earlier presented.	eal and/or appellant fai See 37 CFR 41.33(d)(	ls to provide a 1).				
<ul> <li>11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.</li> <li>12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s)</li> <li>13.  Other:</li> <li>Jeffrey Fredman Primary Examiner Art Unit; 1637_</li> </ul>								
Jeffrey Fredman Primary Examiner Art Unit: 1637	11. 🖾 The request for reconsideration has been considered but does NOT place the application in condition for allowance because:							
Jeffrey Fredman Primary Examiner Art Unit: 1637		PTO/SB/08) Paper No(s)						
Primary Examiner Art Unit: 1637_	13. [ Other:		1					
Art Unit: 1637_								
·								

## **Continuation Sheet (PTO-303)**

Continuation of 3. NOTE: The new limitation regarding the "two part probe structure thereby creates a linear overlap betwen the probe and reporter linkers" is a new limitation which would require further search and consideration. Applicant does not identify basis for the limitation so there may be the issue of new matter as well.

Continuation of 11. does NOT place the application in condition for allowance because: The arguments are addressed to the claims as amended. Since the amendment was not entered, the arguments are moot..